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Article 2: Sales

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UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains a digest of all decisions of courts of record interpreting provisions of the Uniform Commercial Code from the date of its initial passage in Pennsylvania in 1953 through published reports of the National Reporter System to December 31, 1959, and through Volume 17 Pennsylvania District and County Reports 2d Series. While the Code has now been adopted in five states, no decisions up to this time have been found interpreting other than the Pennsylvania statute.

Where a decision interprets only a portion of a Code section that portion is cited prior to the reported case. Appropriate notation is made concerning those decisions which are based upon language contained in the 1953 version of the Code to the extent that such language differs from the 1957 draft.

Subsequent issues of the REVIEW will keep the annotations up to date.

ROBERT A. GORFINKLE

ARTICLE 1: GENERAL PROVISIONS

SECTION 1-201. General Definitions

Subject to additional definitions contained in the subsequent Articles of this Act which are applicable to specific Articles or Parts thereof, and unless the context requires, in this Act:

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

The First National Bank v. Anderson, 7 Pa. D. & C. 2d 661 (1956)

It is no defense against a bank as a holder of a judgment note that no inquiry was made by it of the payee or maker as to whether the contract for which the note was given had been satisfactorily completed. There being no evidence that the failure to make such inquiry constituted a divergence from common banking or commercial practice, the bank was not lacking in "good faith," under Sec. 1-201, in accepting the paper.

ARTICLE 2: SALES

SECTION 2-105. Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit"

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. . . .

(Where a cited case interprets only a portion of a Code section only that portion is set out)

In re Carter's Claim, 390 Pa. 365, 134 A.2d 908 (1957)

A contract for the purchase and sale of all outstanding stock of a corporation and its subsidiaries is a transaction involving "investment securities" expressly excluded from the Sales section of the UCC.

SECTION 2-106. Definitions. "Contract for Sale"; "Sale"; "Present Sale"; "Conforming to Contract"; "Termination"; "Cancellation"

(1) . . . "Contract for Sale": includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is accomplished by the making of the contract.

Sears, Roebuck & Company v. Power, 390 Pa. 206, 134 A.2d 659 (1957)

In proceeding for variance of zoning ordinance which prohibited use of premises as a warehouse, held that although customers of retail store would come to warehouse building to take delivery of certain items purchased by them, the building did not constitute a retail outlet permitted by the zoning regulations. The definition of sales and the passage of title concepts in Section 2-106 do not have any application to zoning regulations dealing with the physical use to which land is put.

SECTION 2-201. Formal Requirements: Statute of Frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought. . . .

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(c) with respect to goods for which payment has been made and accepted

Williamson v. Martz, 11 Pa. D. & C. 2d 33 (1958)

Down payment made and accepted on a contract for the purchase and sale of a single item of merchandise does not take the contract out of Section 2-201(3)(c) as the part payment exception to the statute applies only to divisible contracts or to contracts providing for installment deliveries and then only to the extent for which the payment has been made.

SECTION 2-202. Final Written Expression: Parol or Extrinsic Evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are in-

(Where a cited case interprets only a portion of a Code section only that portion is set out)

cluded therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Holland Furnace Co. v. Heidrich, 7 Pa. D. & C. 2d 204 (1956)

In suit for purchase price of oil furnace, the contract of sale being in writing, the defendant set up in answer oral considerations claimed by the plaintiff to constitute a parol contemporaneous agreement varying the terms of the written instrument. Held, conformably to Section 2-202, the written contract being incomplete and ambiguous, it may be explained and supplemented by parol evidence, the written agreement obviously not having been intended by the parties as a complete and exclusive statement of the terms agreed upon.

SECTION 2-403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting"

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence

Wiesal v. McBride, 191 Pa. Super 411, 156 A.2d 613 (1959)

Where automobile dealer sold car out of inventory and subsequently mortgaged the vehicle to a bank pursuant to the provisions of an existing floor plan for which financing statement had been previously filed, the purchaser is entitled to a decree ordering assignees of bank and dealer to deliver title to automobile free and clear of all encumbrances. Section 2-403 intends to protect persons who buy in ordinary course of business, the obligation to discharge the security interest resting with the dealer.

SECTION 2-606. What Constitutes Acceptance of Goods

(1) Acceptance of goods occurs when the buyer . . .

(c) does any act inconsistent with the seller's ownership;

Sincavage v. Howells, 8 Pa. D. & C. 2d 515 (1957)

In action by seller for materials sold and delivered, buyer counter-claimed alleging reliance upon representations of seller that materials were suitable for product manufacture, acceptance and use of the materials and

(Where a cited case interprets only a portion of a Code section only that portion is set out)

their unfitness for such use with resulting damages to the buyer. Held counterclaim demurrable it appearing that the buyer accepted the materials and indicated acceptance under Section 2-606 by acts inconsistent with seller's ownership through processing and sales to third persons.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-115. Incomplete Instruments

(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, . . .

(2) If the completion is unauthorized the rules as to material alteration apply (Section 3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

Fidelity Trust Company v. Gardiner, 191 Pa. Super. 17, 155 A.2d 405 (1959)

Where a note, accompanied by a contract signed on a form bearing the printed name of the contractor with whom the makers had been falsely led to believe they were contracting and also containing blanks for the insertion of specifications unrelated to the subject matter of the work to be performed, was negotiated to a holder who also received the written contract, the makers were entitled to the benefit of the Incomplete Instruments provisions of Section 3-115, it appearing that the contract as transferred to the holder had been altered by the excision of the printed name of the contractor as it originally appeared on the document and the insertion by rubber stamp of the name of the firm with whom the makers had unwittingly contracted.

SECTION 3-302. Holder in Due Course

- (1) A holder in due course is a holder who takes the instrument
 - (a) for value; and
 - (b) in good faith; and
 - (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

The First National Bank v. Anderson, 7 Pa. D. & C. 2d 661 (1956)

A bank, as a holder of a judgment note, may be a holder in due course under Section 3-302 despite the fact that it made no inquiry of the payee or maker as to whether the contract for which the note was given had been satisfactorily completed. There was no evidence that the failure to make such inquiry constituted a divergence from common banking or commercial practice.

(Where a cited case interprets only a portion of a Code section only that portion is set out)